United Nations CAT/C/AZE/QPR/5

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the fifth periodic report of Azerbaijan*

Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. In its previous concluding observations (see CAT/C/AZE/CO/4, para. 40),[1] the Committee requested Azerbaijan to provide further information regarding areas of particular concern identified by the Committee, namely the eradication of widespread torture and ill-treatment, the eradication of arbitrary imprisonment and alleged torture of human rights defenders, and respect of fundamental legal safeguards (paras. 9, 11 and 13). Noting that a reply concerning the information sought by the Committee was provided on 7 December 2016, the Committee expresses its appreciation for the State party's responses on those matters and the substantive information provided. In view of that information, the Committee considers that the recommendations contained in paragraphs 9, 11 and 13 mentioned above have not been fully implemented (see paras. 2, 5 and 27 of the present document).

Article 2[2]

2. With reference to the Committee's previous concluding observations (para. 13) and the State party's follow-up replies, please provide information on the measures adopted since 2015 to guarantee, in practice, that all detained persons, including juveniles, are afforded the fundamental legal safeguards set out in domestic legislation from the outset of their deprivation of liberty, and in particular the right:

(a) To be informed orally and in writing, and in a language they understand, of both the charges against them and their rights and how to exercise them, as recommended

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

[2] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

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by the Working Group on Arbitrary Detention.[3] Please clarify, if applicable, if any of the measures in place aim at ensuring this right, in particular, to detained juveniles, persons with low literacy skills and foreign nationals;[4]

(b) To have confidential access to a qualified and independent lawyer, including one of the detainee's choice, or to free legal aid when needed.[5] Please indicate, if applicable, if the measures in place to ensure these rights also aim at ensuring that there is a sufficient number of lawyers practising in all regions of the country,[6] particularly in view of the implementation of the new Law on Lawyers. Please explain the measures in place to ensure that lawyers providing legal aid are properly remunerated,[7] and that the legal advice provided is of good quality.[8] Please also comment on the allegations that authorities have delayed access by detainees to an attorney in certain cases and whether these allegations have been investigated;

(c) To request and receive an examination by an independent medical doctor in full confidentiality.[9] Please comment on allegations that the authorities have maintained a de facto ban on independent medical examinations of detainees who claimed mistreatment and whether these allegations have been investigated. Please also clarify whether doctors can bring medical reports of injuries suspected of being caused by torture directly to the attention of the public prosecutor on a confidential basis;

(d) To be able to inform a family member or any other person of their choice about their deprivation of liberty;

(e) To be brought before a competent, independent and impartial court within a maximum of 48 hours,[10] or 24 hours in the case of juveniles.[11] Please also indicate the measures taken to ensure that persons deprived of their liberty are able to challenge the legality of their detention with the assistance of a lawyer;[12]

(f) To have their detention recorded in a register both at the place of detention and in a central register of persons deprived of liberty. Please clarify the steps taken to develop a comprehensive national registration system of persons deprived of liberty;

(g) To be questioned by the police in the presence of both a lawyer and a parent or guardian in the case of juveniles,[13] as recommended in the previous concluding observations (para. 21).

3. Please indicate how the State party is monitoring compliance with the fundamental legal safeguards set out in national legislation and provide data on cases in which, during the period under review, officials have been disciplined or prosecuted for failing to respect the rights of detainees.

4. With reference to the Committee's previous concluding observations on the independence of lawyers (paras. 16–17), please provide information on the legislative or other measures taken to ensure that no executive or judicial authority initiates criminal or other sanctions against lawyers, or threatens to do so, for having taken any action in accordance with their recognized professional duties, in particular when representing victims of torture, human rights defenders, political opponents and journalists.[14] In view of the implementation of the new Law on Lawyers and the consequent reduction of human rights lawyers able to practise law, please indicate whether the State party foresees any

[3] See A/HRC/36/37/Add.1, para. 93 (b).
[4] Ibid., paras. 52–54.
[5] Ibid., para. 94 (a)–(c).
[6] See A/HRC/36/37/Add.1, paras. 61 and 94 (e); A/HRC/34/52/Add.3, para. 90; and CCPR/C/AZE/CO/4, paras. 24–25.
[7] See A/HRC/36/37/Add.1, para. 94 (e); and CCPR/C/AZE/CO/4, paras. 24–25.
[8] See CCPR/C/AZE/CO/4, paras. 24–25.
[9] See A/HRC/36/37/Add.1, para. 93 (a).
[10] Ibid., para. 69.
[11] Ibid., para. 73.
[12] Ibid., para. 91 (b).
[13] Ibid., para. 73.
[14] See CCPR/C/AZE/CO/4, para. 28.

measure to mitigate the effect of the Law on the ability of torture victims to obtain access to justice. Please indicate the number of investigations carried out during the period under review regarding the reported harassment and unjustified prosecution of and disciplinary action against lawyers who have represented clients in politically sensitive cases, as in the cases brought against Khalid Bagirov, Elchin Namazov, Farhad Mehdiyeh, Aslan Ismayilov, Muzzafar Bakhisov, Alaif Hasanov, Bahruz Bayramov and Elchin Sadigov.

5. Please indicate the measures taken to encourage the reform of the internal governance of the Bar Association, so that it can be relied on to protect lawyers from threats, and to respect the independence of the profession.

6. Please comment on reports that torture continues to be routinely practised to seek confessions from detainees [15] and to coerce them into signing police "records" for administrative offences, for example in Ganja Pretrial Detention Facility No. 2,[16] and the measures taken to prevent this practice and to investigate ex officio these allegations. Please indicate whether any measures have been taken to promote modern approaches to crime solving and evidence-based investigation, with a view to removing the need to secure confessions from suspects to obtain convictions.[17]

7. With reference to the Committee's previous concluding observations regarding the national preventive mechanism (para. 22), please provide information on:

(a) Measures taken to ensure the functional and financial independence of the Office of the Human Rights Commissioner, as recommended by the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions, and that of the national preventive mechanism, in line with the guidelines on national preventive mechanisms (CAT/OP/12/5) of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Steps to facilitate the regular monitoring and inspection of all places of detention and to comply with the recommendations of the national preventive mechanism.[18] In this regard, please provide information about the number of visits undertaken by the national preventive mechanism and examples of recommendations made by it relating to the prevention of torture that have been implemented by the authorities during the reporting period;

(c) Annual statistical data for the period under review on the number of complaints of torture and ill-treatment received by the Office of the Human Rights Commissioner, the investigations into those complaints and their outcome.

8. Further to the Committee's previous concluding observations (para. 30) regarding gender-based violence, please provide information for the period under review on the number of complaints, investigations, protection orders requested and granted, prosecutions and convictions. Please indicate the sentences imposed in cases of gender-based violence involving the State party in an active or passive way and the measures adopted to ensure the effective implementation of the Law on the Prevention of Domestic Violence.[19] Please also provide information on the number of complaints, investigations, prosecutions and convictions and the sentences imposed in cases of human trafficking and on the efforts to create standard operating procedures to implement the victim identification and referral mechanism,[20] including for child victims. Please also indicate the measures taken to provide sufficient shelter to victims of trafficking.

Article 3

9. In the light of the Committee's previous concluding observations (para. 34), please describe the measures taken to ensure that all asylum seekers, including those originating

[15] Ibid., para. 18.
[16] See A/HRC/36/37/Add.1, para. 64.
[17] Ibid., para. 95 (b).
[18] See CCPR/C/AZE/CO/4, para. 19 (b).
[19] See CEDAW/C/AZE/CO/5, paras. 22–23.
[20] Ibid., paras. 24 (b) and 25 (b).

from Chechnya, Russian Federation, have prompt access to the refugee status determination procedure and prompt certification of their status as asylum seekers in order to protect them from refoulement.

10. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be subject to torture if returned to their country of origin.

11. Please indicate the number of refoulements, extraditions and expulsions carried out during the reporting period, including on the basis of diplomatic assurances or the equivalent thereof, and any instances in which the State party has offered such diplomatic assurances or guarantees.

Articles 5 and 7–8

12. Since the State party's previous report was considered by the Committee, please indicate whether the State party has rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.

Article 10

13. With reference to the Committee's previous concluding observations (para. 36), please provide information on training programmes developed to ensure that all law enforcement officials, prison staff, border guards and other public officials are fully aware of the provisions of the Convention. Please provide information on the methodology used to assess the effectiveness of training and educational programmes in reducing the number of cases of torture and ill-treatment.

14. Please clarify whether compulsory training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is provided to medical personnel and other law enforcement and judicial officials who deal with detainees and asylum seekers and are involved in the investigation and documentation of cases of torture and how many persons have participated in such training.

Article 11

15. With reference to the Committee's previous concluding observations (para. 25), please provide information about the number of deaths in custody during the reporting period, including the number of persons injured or killed as a result of violence, the excessive use of physical force or through the use of special means or restraint methods inside places of detention, indicating whether the alleged perpetrator was a State official or a fellow detainee. Please also describe the measures taken to prevent incidents of death, inter-prisoner violence and suicide in custody and to conduct effective investigations into the circumstances of deaths in custody, as indicated by the European Court of Human Rights in the case *Mustafayev v. Azerbaijan*.[21] Please provide detailed information on the outcome of investigations into such deaths or injuries, along with the penalties imposed, including specific information with regard to the deaths of: (a) the blogger Mehman Qalandarov; (b) Rashad Mehdiyev; (c) the journalist Rasim Aliyev; (d) Farahim Bunyadov; (e) Mehman Telman oglu Huseynov; (f) Sahavat Binnatov; (g) Colonel Saleh oglu Gafarov; (h) Elchin Guliyev; (i) Lieutenant Tamkin Nizamioglu; (j) Dayndur Nuru oglu Azizli; and (k) Bahruz Hajiyev.

16. With reference to the Committee's previous recommendations (para. 25), please provide updated information on the following:

(a) Annual statistical data for the period under review, disaggregated by place of detention, on the capacity and occupancy rates of all places of detention under the

[21] Application No. 47095/09, judgment of 4 May 2017.

responsibility of the Ministry of Justice, the Ministry of Internal Affairs and the State Security Service,[22] indicating the number of pretrial detainees at each place of detention;

(b) Measures taken to address overcrowding[23] and long-term pretrial detention;

(c) Measures taken to improve the conditions of detention, in particular in Gobustan prison, Shuvalan remand prison, prisons Nos. 3, 6 and 14 (para. 25) and in Ganja Pretrial Detention Facility No. 2;[24]

(d) Measures to fight corruption inside the penitentiary system;

(e) Measures to improve access to medical care, including psychiatric treatment, and to prevent the transmission of infectious diseases, such as tuberculosis;

(f) Measures taken to organize daily exercise, rehabilitation and reintegration services in criminal justice institutions, in particular in Gobustan prison and in the facilities used for administrative detention.

17. With reference to the Committee's previous concluding observations (para. 21), please indicate the measures taken to develop alternatives to detention for children in conflict with the law, such as educational measures or probation.[25] Please also indicate the steps taken to ensure that juveniles are separated from adults in all detention facilities and are protected against any form of ill-treatment or intimidation.[26]

18. Please indicate whether there are any due process rights with regard to the imposition of disciplinary sanctions in places of detention, including the right to appeal the disciplinary decision. With regard to solitary confinement, please provide information on the regime applicable, including the maximum and average duration, whether juveniles and persons with disabilities can be subjected to solitary confinement and whether or not the duration is recorded in each case.

19. Please explain the measures taken to ensure that detention of asylum seekers and other non-citizens is only used as a measure of last resort and for the shortest time possible.

Articles 12–13

20. Please explain the mandate and work of the bodies that investigate allegations of torture and ill-treatment by the police, prison staff and security and military personnel, indicating how the independence of those bodies is guaranteed so that there is no hierarchical or institutional link between the alleged perpetrators and the investigators.

21. In the light of the Committee's previous concluding observations (paras. 8–9 and 28–29) and the State party's follow-up information, please provide annual statistical data since 2015 on the number of complaints, investigations, prosecutions and convictions, and the punishments handed down, for torture and ill-treatment, including the excessive use of force, committed by law enforcement, security, military or prison officials. Please include information on the following cases: (a) Taleh Baghizada and other members of the Muslim Unity movement who were arrested in the village of Nardaran in 2015; (b) Bayram Mammadov and Giyas Ibrahimov; (c) Elgiz Gahraman; (d) Bakhtiyar Ismayilov; (e) Rashad Abbasov; (f) Afghan Sagidov; (g) Ikram Rahimov; (h) Fikrat Faramazoglu; and (i) Nijat Amiraslanov.

22. In the light of the Committee's previous concluding observations (paras. 14–15), please indicate the measures taken to prevent the executive branch from interfering with or influencing the judiciary, in particular in order to avoid criminal proceedings being instituted without a legitimate basis for doing so or detention being imposed without a proper assessment of the need for such detention.[27]

[22] See A/HRC/36/37/Add.1, para. 47.
[23] Ibid., para. 96.
[24] Ibid., para. 65.
[25] Ibid., para. 98 (b).
[26] Ibid., paras. 74 and 98 (e)–(f).
[27] See A/HRC/36/37/Add.1, para. 47.

23. Please also provide information on any other steps taken to promptly and impartially investigate and prosecute cases of torture and ill-treatment, and in particular on measures to:

(a) Ensure that every person, particularly those deprived of their liberty, has access to an independent and effective complaint mechanism;[28]

(b) Protect complainants, victims, their relatives and their lawyers against reprisals. In this regard, please provide information on the measures taken to refrain from prosecuting alleged victims of torture on charges of defamation because they have complained about the ill-treatment they have suffered, as has allegedly happened to the blogger Mehman Huseynov. Please also explain the measures taken to protect lawyers against reprisals for having complained about their clients' ill-treatment in detention, as alleged in the case of Yalchin Imanov.

Article 14

24. In the light of the Committee's previous concluding observations (para. 39) and paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide information on:

(a) All forms of redress and compensation measures, including means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families, indicating the number of requests for compensation made, the number granted and the amounts ordered and actually provided;

(b) The kind of rehabilitation programmes offered, including medical and psychological treatment of trauma, and the allocation of adequate resources to ensure the effective functioning of such programmes.

25. Please indicate the measures taken to execute the judgments of the European Court of Human Rights and provide redress to victims of violations of the Convention in the following cases: *Mammadov (Jalaloglu) v. Azerbaijan*;[29] *Muradova v. Azerbaijan*;[30] and *Garayev v. Azerbaijan*.[31]

Article 15

26. In the light of previous concluding observations (paras. 18–19) and of reports indicating that courts often fail to investigate allegations of torture, please provide statistical information for the period under review on the number of cases in which detainees have alleged in court that their confessions were extracted through torture, the number of such allegations that have led to investigations and their outcomes. Please also indicate the number of cases that have been dismissed by courts due to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

27. With reference to the Committee's previous recommendations (paras. 10–11) and the State party's follow-up information indicating that most of the human rights defenders mentioned in the previous concluding observations had been released, please clarify whether the State party also intends to release Ilgar Mammadov, in execution of the judgment of the European Court of Human Rights.[32] Please also comment on continued reports of the use of intimidation and the arbitrary initiation of criminal proceedings, including the arrest and detention of those targeted, to punish journalists and political opponents for having criticized the Government or to punish human rights defenders for their human rights activities,[33] as alleged in the cases of: (a) Afgan Mukhtarli; (b) the journalists Aziz Orudjev and Nijat Amiraslanov; (c) the journalists Afgan Sadykhov and

[28] Ibid., paras. 66 and 95 (a).
[29] Application No. 34445/04, judgment of 11 January 2007.
[30] Application No. 22684/05, judgment of 2 April 2009.
[31] Application No. 53688/08, judgment of 10 June 2010.
[32] *Mammadov v. Azerbaijan* (application No. 15172/13), judgment of 22 May 2014.
[33] See CCPR/C/AZE/CO/4, para. 36 (a); and CERD/C/AZE/CO/7-9, paras. 35–36.

Teymur Kerimov; (d) Zamin Gadji; and (e) the youth activist Vusal Zeynalov. Please describe the steps taken to investigate these cases or other examples of investigations undertaken by the State party into complaints of such intimidation and harassment, along with information on any resulting prosecutions, trials and penalties.

28. In the light of the Committee's previous concluding observations (paras. 26–27), please provide updates on the measures to:

(a) Ensure that all persons with intellectual and/or psychosocial disabilities whose involuntary placement is sought are duly informed of their right to challenge the decision,[34] have an opportunity to be heard in person by a competent judge before deciding on the placement, have access to free legal aid and are provided with a copy of the court decision;[35]

(b) Establish a mechanism to review cases of involuntary confinement, including the possibility of appeal;[36]

(c) Register and monitor all uses of restrictive measures and isolation imposed on persons with intellectual and/or psychosocial disabilities. Please provide information, disaggregated by location, age range and the reason for the restriction being imposed, on the number of persons subjected to restrictions and the number of investigations conducted into any use of restraints and the results thereof;

(d) Provide adequate living conditions and rehabilitative activities for persons in psychiatric facilities;[37]

(e) Promptly and impartially investigate all complaints of torture and ill-treatment or excessive use of restrictive measures on persons, including children, with intellectual and/or psychosocial disabilities in psychiatric institutions and to provide reparations to victims.

29. Please provide information on the measures taken by the State party to prevent arbitrary arrests and ill-treatment when quelling demonstrations and to ensure the prompt, impartial and thorough investigation of all allegations of the excessive use of force, for example in the context of the demonstration held by the Popular Front Party on 17 September 2016 and the one held before the referendum on 26 September 2016.

30. Please comment on reports of acts of police brutality committed against individuals on the basis of their actual or perceived sexual orientation and gender identity, including the detention in September 2017 of around 150 people and the alleged physical ill-treatment to which they were subjected. Please provide information on the investigative steps taken to address these allegations and their outcome.

31. Please describe the legislative and other measures taken to ensure that corporal punishment of children is explicitly prohibited in all settings.

General information on other measures and developments relating to the implementation of the Convention in the State party

32. Please provide information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.

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[34] See A/HRC/36/37/Add.1, para. 101 (c).

[35] Ibid., para. 45.

[36] Ibid., paras. 41 and 101 (a).

[37] Ibid., paras. 43 and 101 (a).